

New claims 21-27 have been added. Support for new claim 21 exists, *inter alia*, at page 14, lines 29-32, and support for new claims 22-27 exists, *inter alia*, at page 3, lines 8-13 and page 4, lines 20-27.

Claims 1-27 are currently pending.

#### **REMARKS**

The pending claims relate to physiologically-acceptable compositions comprising a surfactant system such that at least one paracrystalline phase of direct and/or cubic type appears when the temperature increases above 30°C and remains present up to at least 45°C.

As noted in the present specification, many difficulties exist in preparing cosmetic or dermatological cleansing compositions (for example, thermal stability problems), particularly when the compositions are in the form of a foaming cream. (Page 2, line 1 through page 3, line 6 of the specification).

The presently claimed invention addresses such problems and generally provides thermally-stable, physiologically-acceptable cleansing compositions for application to skin, scalp and/or hair. Specifically, the present invention provides such compositions in the form of a foaming cream. As such, the presently claimed invention represents an advance in the art deserving of patent protection.

In view of this background, each of the rejections made in the outstanding Office Action will be addressed in turn.

#### **REJECTION UNDER 35 U.S.C. §112**

The Office Action has rejected claim 3 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants respectfully submit that the above non-limiting amendments to

this claim have rendered this rejection moot. Accordingly, Applicants respectfully request that the rejection under § 112 be withdrawn.

### **REJECTIONS UNDER 35 U.S.C. §§102 AND 103**

The Office Action has rejected claims 1-7 and 9-19 under 35 U.S.C. § 102 as anticipated by U.S. patent 6,007,769 ("Lance-Gomez") and claims 1-20 under 35 U.S.C. § 103 as obvious over Lance-Gomez in view of EP 339,994 ("Rosser"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

Lance-Gomez neither teaches nor suggests the claimed invention. Lance-Gomez discloses compositions having cleansing properties in "laundry cleaning agent compositions, grease and oil removal, glass/hard surface cleaning and oven cleaning." (Col. 1, line 65 through col. 2, line 1). The compositions are reportedly also useful as "air fragrancing gels and disinfectant compositions." (Col. 2, lines 1-4). One skilled in the art would not have been motivated to place such harsh, industrial strength compositions on delicate human skin for any purpose, let alone for cleansing purposes. Thus, Lance-Gomez neither teaches nor suggests that his compositions can be applied to skin or that they can be used for cosmetic or dermatological purposes, particularly the purpose of cleansing the skin, scalp and/or hair.

In contrast, the claimed invention relates specifically to physiologically-acceptable compositions (claims 1-19 and 24-25) and to methods of cleansing the skin, scalp and/or hair using such compositions. (Claims 20-23 and 26-27). Applicants respectfully submit that for this reason alone, the rejection under 35 U.S.C. § 102 is improper and should be withdrawn.

Moreover, with respect to new claims 22-27, Lance-Gomez neither teaches nor suggests achieving temperature stability in compositions containing a cubic phase, or that his

compositions can be in the form of a foaming cream (Lance-Gomez relates to gel and viscous liquid compositions -- see, col. 1, lines 54-63). This distinction between composition types can be significant. (See, e.g., pages 1-2 of the present specification).<sup>1</sup> Accordingly, Lance-Gomez does not anticipate new claims 22-27 for these reasons as well.

Regarding the rejection under 35 U.S.C. § 103, Lance-Gomez is deficient for at least the reasons set forth above. Rosser fails to compensate for these deficiencies. What's more, no motivation would have existed to combine Lance-Gomez and Rosser to yield the claimed invention.

Rosser is the EP counterpart to U.S. patent 4,975,218, which is cited at col. 4, line 47 of Lance-Gomez. Lance-Gomez expressly criticizes the '218 patent, stating that it "does not teach or suggest robust soap compositions, which are also stable to high temperatures." (Col. 4, lines 52-54). In view of Lance-Gomez's assessment of Rosser, it is clear that combining these two references would not yield a stable, physiologically-acceptable composition suitable for application to skin. In other words, combining these references would not yield the claimed invention.

Moreover, in view of Lance-Gomez's criticism and dismissal of Rosser, one skilled in the art would not have been motivated to combine these references. Instead, if one skilled in the art were seeking to combine Lance-Gomez with another reference, he would certainly seek to combine it with a reference which was not "known" to disclose unstable compositions.

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<sup>1</sup> Attached hereto at Tab A are photographs demonstrating this difference. On the left is an opaque composition made in accordance with the present invention. On the right is the clear composition of example 2 in Lance-Gomez.

Finally, according to MPEP § 2143.01, references cannot be combined where the combination would render the prior art unsatisfactory for its intended purpose. Here, Rosser teaches away from stable compositions. Because Lance-Gomez seeks to produce stable industrial compositions, combining Rosser and Lance-Gomez would render Lance-Gomez unsatisfactory for its intended purpose. Accordingly, the asserted combination of references is improper under MPEP § 2143.01.

In view of the above, Applicants respectfully request that the rejection under 35 U.S.C. § 103 be withdrawn.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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1. (Amended) A physiologically-acceptable composition comprising a surfactant system in an aqueous medium, wherein said surfactant system exhibits at least one paracrystalline phase [of either a] selected from the group consisting of direct hexagonal phase, [type and/or a] cubic [type] phase, and mixtures thereof, when the temperature increases above 30°C and remains present up to at least 45°C.

3. (Amended) The composition according to Claim 1, wherein said surfactant system further comprises [also exhibits] a lamellar phase [of the lamellar type] when the temperature increases above 30°C which remains present up to at least 45°C.

19. (Amended) The composition according to Claim 1, wherein said surfactant system exhibits at least one paracrystalline phase [of either a] selected from the group consisting of direct hexagonal phase, [type or a] cubic [type] phase, and mixtures thereof, at temperatures above 45° [degrees] C.

20. (Amended) A process for cleansing grime from skin, scalp or hair comprising:  
applying to the skin, scalp or hair a physiologically-acceptable composition comprising a surfactant system in an aqueous medium, wherein said surfactant system exhibits at least one paracrystalline phase [of either a] selected from the group consisting of

direct hexagonal phase, [type or a] cubic [type at temperatures ranging from 30°C to 45°C, inclusive] phase, and mixtures thereof, when the temperature increases above 30°C and remains present up to at least 45°C;

forming a foam of said surfactant system by a massaging action; and  
rinsing said foam with water.

Claims 21-27 (New)